

§ 228.21

least 8 consecutive hours off duty during the preceding 24 hours.

(b) Reports required by paragraph (a) of this section shall be filed in writing on FRA Form F-6180-3² with the Office of Safety, Federal Railroad Administration, Washington, DC 20590. A separate form shall be used for each instance reported.

[37 FR 12234, June 21, 1972, as amended at 43 FR 3124, Jan. 23, 1978]

§ 228.21 Civil penalty.

Any person (an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least \$500 and not more than \$11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed \$22,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See appendix B to this part for a statement of agency civil penalty policy. Violations of the Hours of Service Act itself (*e.g.*, requiring an employee to work excessive hours or beginning construction of a sleeping quarters subject to approval under subpart C of this part without prior approval) are subject to penalty under that Act's penalty provision, 45 U.S.C. 64a.

[53 FR 52931, Dec. 29, 1988, as amended at 63 FR 11622, Mar. 10, 1998]

²Form may be obtained from the Office of Safety, Federal Railroad Administration, Washington, DC 20590. Reproduction is authorized.

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§ 228.23 Criminal penalty.

Any person who knowingly and willfully falsifies a report or record required to be kept under this part or otherwise knowingly and willfully violates any requirement of this part may be liable for criminal penalties of a fine up to \$5,000, imprisonment for up to two years, or both, in accordance with 45 U.S.C. 438(e).

[53 FR 52931, Dec. 29, 1988]

Subpart C—Construction of Employee Sleeping Quarters

SOURCE: 43 FR 31012, July 19, 1978, unless otherwise noted.

§ 228.101 Distance requirement; definitions.

(a) The Hours of Service Act, as amended (45 U.S.C. 61-64b), makes it unlawful for any common carrier engaged in interstate or foreign commerce by railroad to begin, on or after July 8, 1976, the construction or reconstruction of sleeping quarters for employees who perform duties covered by the act "within or in the immediate vicinity (as determined in accordance with rules prescribed by the Secretary of Transportation) of any area where railroad switching or humping operations are performed." 45 U.S.C. 62(a)(4). This subpart sets forth (1) a general definition of "immediate vicinity" (§ 228.101(b)), (2) procedures under which a carrier may request a determination by the Federal Railroad Administration that a particular proposed site is not within the "immediate vicinity" of railroad switching or humping operations (§§ 228.103 and 228.105), and (3) the basic criteria utilized in evaluating proposed sites (§ 228.107).

(b) Except as determined in accordance with the provisions of this subpart. "The immediate vicinity" shall mean the area within one-half mile (2,640 feet) (804 meters) of switching or humping operations as measured from the nearest rail of the nearest trackage where switching or humping operations are performed to the point on the site where the carrier proposes to construct or reconstruct the exterior wall of the structure, or portion of such wall, which is closest to such operations.